

## Federal Mediation and Conciliation Service

## § 1450.9

Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in this regulation, FMCS will proceed in any actions taken in accordance with applicable requirements found in the sources referred to in paragraphs (a), (b), and (c) of this section.

### § 1450.5 Other procedures.

Nothing contained in this regulation is intended to require FMCS to duplicate administrative proceedings required by contract or other laws or regulations.

### § 1450.6 Informal action.

Nothing contained in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

### § 1450.7 Return of property.

Nothing contained in this regulation is intended to deter FMCS from demanding the return of specific property or from demanding, the return of the property or the payment of its value.

### § 1450.8 Omissions not a defense.

The failure of FMCS to comply with any provision in this regulation shall not serve as a defense to the debt.

## Subpart B—Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

### § 1450.9 Demand for payment.

Prior to making an administrative offset, demand for payment will be made as stated below:

(a) Written demands shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, FMCS

will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interest (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this subpart including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of:

(1) The basis for the indebtedness and the right of the debtor to request review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (subpart D of this regulation) and

(3) The date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered. FMCS will exercise care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. Apart from this, there is no prescribed format for the demand letters.

(c) As appropriate to the circumstances, FMCS may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) FMCS will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtor who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiations of, at any time during, or after completion of the demand cycle, FMCS determines to pursue administrative offset, then the requirements specified in §§1450.10 and 1450.11, as applicable, will be met. The availability of funds for

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offset and the agency determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§1450.10 and 1450.11 as applicable.

### **§ 1450.10 Collection by administrative offset.**

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) For purposes of this section, the term "administrative offset" is the same as stated in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. FMCS will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, FMCS may give due consideration to the debtor's financial condition and is not required to use offset in every instance in which there is an available source of funds. FMCS may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Before the offset is made, a debtor shall be provided with the following: Written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency

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records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt. FMCS may also make requests for offset to other agencies holding funds payable to the debtor, and process requests for offset that are received from other agencies.

(1) FMCS will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, FMCS will normally accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under §1450.9, or some other regulatory or statutory authority, such as pursuant to a notice of audit allowance, the agency is not required to duplicate those requirements before taking administrative offset.

(3) FMCS may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law, regarding the accrual of debts, such as 28 U.S.C. 2415.

(4) FMCS is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local Governments;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or